In the High Court of Judicature at Madras

Dated: 13/10/2003

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The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice S.K. Krishnan

Writ Appeal No. 1738 of 2000

Dr. P. Ramasamy
H.8/3 Tamil Nadu Housing
Board Flats,
Thiruvanmiyur,
Chennai 41. ... Appellant

-Vs-

1. State of Tamil Nadu,
rep. by its Secretary to Govt.
Education, Science and
Technology Department,
Fort St. George,
Chennai 9.

2. University of Madras,
Chennai 5.

3. Dr. M. Arumugam,
Professor,
Department of Zoology,
University of Madras,
Chennai 600 005. ... Respondents

Appeal under clause 15 of Letters Patent against the order of a learned single Judge of this Court dated 22.9.2000 made in W.P. No: 6273 of 1996.

!For appellant : Mr.C. Selvaraju

^For 1st respondent : Mrs.N.G. Kalaiselvi,
Government Pleader

For 2nd respondent : Mr. N. Rajan

For 3rd respondent : Mr. Vijay Narayan

:J U D G M E N T

(Judgment of the Court was
delivered by R. Jayasimha Babu, J.)

Appellant is a professor of Zoology in the University of Madras. He is aggrieved by the appointment of the respondent Dr. Arumugam also as a professor. Both of them possess master and doctoral degrees. While the respondent Dr. Arumugam was appointed as lecturer on 11.11.8 3, the appellant was appointed to that post on 4.4.85, a year and half later. While they were serving as lecturers, the University adopted a scheme called merit based career development scheme for teachers, the object of which scheme was stated as, "This scheme is an achievement oriented scheme with the inner motive that only deserving teachers could get the benefit. It is mainly for recognition of achievement". The respondent Dr. Arumugam was promoted as

Reader under that scheme with effect from 16.3.90, when he became eligible for consideration under that scheme, by an order dated 6.10.94. The appellant was appointed as a reader, according to him by direct recruitment, on 19.5.90. The respondent Dr. Arumugam was promoted as professor on 16.3.96 and the petitioner on 19.5.96. We are informed that Dr. Arumugam is now functioning as Head of the department of Zoology.

2. In the counter affidavit filed by the Registrar of the University in the writ petition it is stated that the University had adopted the career development schemes with cut of dates 30.12.92, 30.12.96 and 30.12.98 and that promotions were given from the post of lecturer to Reader to 67, 30 and 5 persons under the schemes I, II and III respectively. It is also stated that 90 readers were promoted to the post of professors under career development scheme I; 48 persons were promoted under career development scheme II to the post of professors and under scheme III, 61 persons were so promoted to the post of professors. It is further stated in that affidavit that 61 of the 301 teachers who had been given the benefit of that scheme have availed the promotion twice i.e. from lecturer to Reader and Reader to professor. It is also averred that professors promoted under that scheme have functioned as heads of department and they have also held membership of the academic council, senate and syndicate by virtue of their being professors.

3. The grievance of the appellant, who was the writ petitioner, was that he should be ranked senior to the respondent Dr.Arumugam as according to him those given promotions under career development scheme were ineligible to be treated as belonging to the cadre of Reader or professor as the case may be as the promotions given to them were personal to them and those posts would cease to exist on their retirement. That contention was rejected by the learned single Judge. Similar contention that those promoted under the merit based career development scheme are not to be regarded as holding the regular posts in the cadre of professor or the reader as the case may be had been considered and rejected by another learned single Judge of this Court in W.P. No: 14137 of 1996, etc. decided on 29.11.96. It was held therein that the provision of the Madras University Act did not make a distinction between

those appointed under the merit based promotion scheme and those appointed pursuant to the advertisement of vacancies and making a selection from among the applicants for the post.

4. It was submitted by the learned counsel for the appellant Mr. Selvaraju that the case of the appellant is squarely covered by the decision of the Supreme Court in the case of Dr. Rashmi Srivastava vs. Vikram University and others, a decision rendered by a two Judge Bench reported in 1995 (3) S.C.C. 653. The Court in that case found that under the statute considered by it viz. M.P. Vishwavidyalaya Adhiniyam, 1973 the only source of appointment recognised was by direct recruitment. On the basis of that finding, it was held that persons who are not directly recruited could not be treated as belonging to the cadre of Reader or professor and that they could not claim seniority over those appointed on regular basis by direct recruitment. That case was considered by a larger Bench of the Supreme Court in the case of Dr. Suman Agarwal vs. Vice-Chancellor and others [1996 (1) S.C. 6 32]. The statute considered there was the U.P. State Universities Act, 1973. The Court, after considering the decision rendered in the case of Rashmi Srivastsava, held that though the appointment made under career development scheme results in personal promotion to the person promoted, nevertheless, so long as he holds that post, that post is required to be treated as temporary addition to the cadre of Reader or professor as the case may be. It was observed by the Court that,
" In other words, the temporary promotions so long as the candidate continues to hold the post as Reader or Professor will be in addition to the sanctioned strength of the Reader or Professor direct recruit. The post held by a promotee is coterminous with the holder of the post ceasing to exist either on retirement or termination, removal, dismissal etc. In other words, both the direct recruits as well as the temporary promotee on personal promotion would form part of the cadre as Reader or Professor, as the case may be. But the promotee is ineligible to get a berth into the quota of direct recruits. He/she would only be a temporary addition to the sanctioned quota to which direct recruit alone is eligible to hold the post as a Reader or Professor, as the case may be."

5. These decisions were considered in a later decision of the Court in the case of Prof. S.A. Siddiqui vs. Prof. M. Wajid Khan and others [1999 (2) S.C.C. 1]. The statute considered in that case was the Aligar Muslim University Act. The several sections of that Act which have been set out in the course of that judgment are in pari materia with the provision of the Madras University Act 1923. The Aligar University Act was enacted in the year 1920. At paragraph 6 of the judgment while dealing with the contention that the Aligar Muslim University Act did not have any provision for the post of readers and professors under the merit promotion scheme and, therefore, the holders of such posts should be referred as persons who are outside the cadre, the Court observed that,
" This contention does not appear to have any basis if one examines the Aligarh Muslim University Act of 1920 and the relevant Statutes. Under Section 2(k) of the Aligarh Muslim University Act "teachers" are defined to mean Professors, Readers, Lectures and such other persons as may be appointed for imparting instruction in the University or a hall and are designated as

teachers by the Ordinances. No difference based on the method of appointment to these posts has been spelt out in the definition. Under Section 5(7) of the said Act, the University has the power to institute Professorships, Readerships, Lecturerships, and other teaching or academic posts required by the University and to appoint persons to such Professorships, Readerships, Lecturerships and other posts and determine their conditions of service in accordance with the Statutes. Under Section 24 of the said Act, the Executive Council shall be the principal executive body of the University. Its constitution and the terms of office of its members and its powers and duties shall be prescribed by the Statutes."

6. The provision of the Madras University Act in Section 2(j), which defines teachers, includes Readers and professors, does not make any distinction among the persons based upon the sources of recruitment. Section 4-A sub-section (4) of the Act sets out the powers of the University and provides that the University may institute professorship, readerships, lecturerships and any other teaching post required by the University and to appoint persons to such professorships, readerships, lecturerships and other teaching posts. The power granted to the University is very wide. Section 16 of the Act which deals with the powers of the Senate, in sub-section 8 empowers it to institute, after consultation with the Academic Council, professorships, readerships, lecturerships, and any other teaching posts required by the University. Section 19 of the Act which deals with the powers of the Syndicate in sub clause (g) empowers it to appoint University Professors and Readers and servants of the University, as also fix their emoluments, define their duties and the conditions of service and provide for filling up of temporary vacancies. Section 24 of the Act which deals with the powers of the Academic Council, in sub-clause (c), empowers it to make proposals to the Senate and the Syndicate for the institution of professorships, readerships, lecturerships, or other teaching posts and in regard to the duties and emoluments thereof.
7. In all these provisions there is no limitation on the powers of the authorities on the basis of the source of recruitment of the persons appointed as lecturers, readers or professors nor is the mode of appointment statutorily prescribed. Discretion is vested in the University and in its organs viz. the Academic Council, the Senate and the Syndicate for creating the posts and filling up the vacancies. In the absence of any limitation on the powers of these bodies and in the absence of any prescription that the mode of recruitment should be direct recruitment, there was no legal impediment to the University approving, as it has, the creation of posts which are personal to the holder under a scheme framed by it, the object of which is to recognise merit and to enable such a merit worthy teacher to hold a higher post.
8. Persons appointed under this scheme, therefore, are not to be treated as persons who are not regularly appointed to the posts held by them. They indeed are regularly appointed in terms of the scheme under which the appointment is made. The persons who are appointed pursuant to advertisement issued, therefore, cannot regard themselves as a higher class when compared to those appointed under the career development scheme. The appointment under this scheme is a recognition given by the University to the meritorious service rendered by a teacher after the University had the opportunity to

watch the performance of the teacher. Recognition so given is of considerable value and is not to be regarded as a boon granted to the appointee. His or her merit is no less than that of the directly recruited persons. There is no room for any direct recruitee regarding himself as superior in any way because of his appointment as direct recruitment when compared to one appointed under the career development scheme. As stated in the affidavit filed by the Registrar the University treats those appointed under the schemes and those appointed by other modes as belonging to one common cadre and has fixed their inter-se seniority based upon the length of their service. Persons who have held the post of professors have also held the post of heads of department. As stated by the respondent in his counter affidavit, some of them have also held the position of Vice Chancellors of other Universities.

9. Learned counsel for the appellant invited our attention to the more recent decision of the Supreme Court in the case of Jai Narain Vyas University and another vs. U.R. Nahar and others [2003 S.C.C. (L & S) 793]. That decision is rendered by a two Judge Bench. It dismissed the appeal against the order of the High Court which had treated the persons appointed to ex-cadre posts as being not eligible for promotion in the same way as those who had been appointed to the cadre posts. That decision does not refer to any of the earlier judgments. We have already referred to the case of Dr. Suman Agarwal wherein a larger Bench has specifically held that the creation of personal posts under career development scheme has to be regarded as temporary addition to the cadre. If the cadre stands enlarged by such temporary addition, the holder of the post is entitled to the same benefits as that of the holder of the posts which formed part of the original strength of that cadre. What matters is being in the cadre and once put in that cadre all are entitled to be treated equally.

10. We, therefore, do not find any substance in the claim made by the writ petitioner / appellant that he should be regarded as senior to the respondent Dr. Arumugham who is presently functioning as head of the Department. We also find the prayer made in the writ petition rather odd. The prayer is that the respondent Dr. Arumugham should be restrained from signing the attendance register. We fail to appreciate this kind of a prayer in a writ petition filed by a professor in an University who ought to know better. The appeal is dismissed.

Index : Yes
Website : Yes

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